

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-6272

SAMUEL ED ROBINSON,

Petitioner,

—v.—

WILLIAM S. NEIL, Warden, Tennessee State Penitentiary,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SIXTH CIRCUIT

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION**

Civil Action No. 5887

Jurisdiction of the Court Is Invoked Under Title 28,
U.S. C.A., Section 2241 (3).

SAMUEL ED ROBINSON, PETITIONER

VS.

**WILLIAM S. NEIL, Warden Tennessee State Prison
Nashville, Tennessee, RESPONDENT**

**PETITION FOR WRIT OF HABEAS CORPUS—
Filed April 30, 1970**

The petitioner, Samuel Ed Robinson, petitions the Court for a writ of habeas corpus, pursuant Title 28, U.S.C.A., Section 2241 (3):

1.

The petitioner was indicted by the Grand Jury of Hamilton County, Tennessee, for three counts of assault with intent to commit first degree murder. Upon trial of the indictments, October 4, 1962, the petitioner entered guilty pleas to all three charges with the understanding the sentences would be served concurrently. This agreement was not kept and petitioner was sentenced from not less than three nor more than ten years on the first charge. Three to five years on the second charge; and from three to ten years on the third charge. The sentences were ordered to be served consecutively.

2.

Prior to petitioner's trial in the Hamilton County Criminal Court on these indictments, he was placed on trial in the City Court of Chattanooga, Tennessee, and

fined fifty (\$50.00) dollars on each of the charges he was tried for in the criminal court. Therefore the petitioner was placed twice in jeopardy for the same offense in violation of the *Double Jeopardy provision of the Fifth Amendment to the Constitution of the United States*.

The Supreme Court of the United States held on April 6, 1970, that the double jeopardy provision of the Fifth Amendment to the United States Constitution forbids trying a person in a municipal court and in a state court also. *Joseph Waller, Jr. vs. State of Florida*, 90 S.Ct. _____. Petitioner's case falls squarely within the decision of *Joseph Waller, Jr. vs. State of Florida*, Supra. The judgment and sentences therefore are void in toto and petitioner is entitled to immediate discharge from this unlawful imprisonment.

3.

Petitioner has exhausted the remedies in the courts of Tennessee by obtaining a decision on his constitutional question from the Criminal Court of Hamilton County and by the Supreme Court of Tennessee. This same identical question was presented to this Court by writ of habeas corpus which was denied and affirmed by the Court of Appeals for the Sixth Circuit. Therefore the provisions of Title 28, U.S.C.A., section 2254.

Premises considered, petitioner prays that he be granted a speedy hearing on his petition for habeas corpus, and after hearing the proof that he be discharged from this illegal confinement.

Respectfully Submitted,

/s/ Samuel Ed Robinson
SAMUEL ED ROBINSON
petitioner

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE,
SOUTHERN DIVISION

Civil Action No. 5887

SAMUEL ED ROBINSON

vs

WILLIAM S. NEIL, Warden Tennessee State Penitentiary

ANSWER OF RESPONDENT

The respondent for answer to the petition filed herein
says:

I.

He admits the convictions of the petitioner as set out, but denies any form of agreement as to the concurrence of the sentences imposed, and demands strict proof thereof if material.

II.

He admits that the occurrence which gave rise to the present convictions in the State cases was the same for which petitioner was convicted in the municipal court of Chattanooga, Hamilton County, Tennessee.

He admits that the offense of assault and battery is a lesser included offense of the crime of Felonious Assault, with intent to commit murder.

III.

The only question presented by this petition is whether this Court should apply the holding of the *Waller v. Florida*, 38 L. W. 4263 (April 6, 1970) retrospectively. Respondent denies that such action should be taken in view of the criteria for such as laid down in *Linkletter v. Walker*, 395 U. S. 1731 and in many cases since that opinion was handed down, as set out in the brief filed herewith.

/s/ Edward E. Davis
EDWARD E. DAVIS
District Attorney General
For Respondent

[Certificate of Service (Omitted in Printing)]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE,
SOUTHERN DIVISION

Civil Action No. 5887

SAMUEL ED ROBINSON

vs

WILLIAM S. NEIL, Warden Tennessee State Penitentiary

BRIEF OF RESPONDENT

Since the only question presented by the petition filed herein, and the response thereto is one of law this brief is being filed with the response to set forth the position of respondent on the question.

Question: Should the holding of the United States Supreme Court in the case of *Waller v. Florida*, S. Ct. —, —, (April 6, 1970) be given retrospective application?

Respondent submits to this Court that it should not. Beginning with the statement of the Court in *Linkletter v. Walker*, 85 S. Ct. 1731, on page 1737 that:

"However, we believe that the constitution neither prohibits nor requires retrospective effect. As Justice Cardozo said, "We think the Federal Constitution has no voice upon the subject."

we find that such retroactive application is not a matter of right, but rather one course of action which the Courts *may* take where the 'exigencies of the situation require such application.' (*Johnson v. New Jersey*, 86 S. Ct. 1772.)

In 1967 the Court laid down the controlling criteria guiding resolution of the question here presented as being:

- (a) the purpose to be served by the new standards
- (b) the extent of the reliance by law enforcement authorities on the old standards, and
- (c) the effect on the administration of justice of a retroactive application of the new standards.

See: *Stovall v. Denno* 87 S. Ct. 1967

In the 1969 case of *Desist v. U. S.* 89 S. Ct. 1030 the Court reaffirmed the above criteria and said, on page 1033

"Foremost among these factors is the purpose to be served by the new constitutional rule."

Applying the reasoning of the Court in *Desist, supra*, to the present case as it relates to the purpose to be served by the new rule enunciated in *Waller*, it seems a fair statement that the purpose of the new rule is to abandon and abolish the long-held 'dual sovereignty' theory of the state—municipal governmental relationships. That this purpose has been accomplished is incontrovertable. Without a doubt, given sufficient reasonable time, every State which has embraced such theory, as well as the Federal system which has in the past approved it, will take the necessary steps to do away with this newly discovered evil in the administration of justice.

As to the (b) part of the criteria set out above one needs but to review the past decisions of many State Courts, and the Federal Courts as set out in an opinion of this Court filed on May 15, 1967 in the case of *Samuel Ed Robinson v. C. Murray Henderson*, Civil Action No. 4954.

Since law enforcement authorities have for so long relied on the great weight of judicial authority contrary to the rule laid down in *Waller* it is virtually impossible to assess with a reasonable degree of accuracy what impact on the administration of our Tennessee criminal laws a retroactive application of *Waller* would have. That impact would however be tremendous. Respondent will attempt to furnish the Court at the hearing the statistics in support of this contention.

The heart of the problem of whether a new constitutional rule is to be given retroactive application or not, i.e. has the violation thereof materially affected the fact-finding and truth-determining processes of the trial, has been obviated in the present case by the defendants